IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HON'BLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE K.T.SANKARAN

THURSDAY, THE 18TH OCTOBER 2007 / 26TH ASWINA 1929

WA.No. 2398 of 2007

(AGAINST THE JUDGEMENT IN OP.26432/1999 Dated 20/12/2004)

APPELLANT/PETITIONER

JOSEPH BASIL,
S/O.BASIL,
AGED 52,
KADUNGAMPARAMBIL HOUSE,
KATTIPARAMBU,
KANNAMALY.

BY ADV. SRI.N.RATHEESH

RESPONDENTS/RESPONDENTS
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1. THE DISTRICT COLLECTOR,
ERNAKULAM.

2. THE SUB COLLECTOR/REVENUE DIVISIONAL OFFICER,
FORT KOCHI.

3. TAHSILDAR (RR),
KOCHI TALUK, KOCHI.

4. WILLIAM CHAKKALACKAL,
CHAKKALACKAL HOUSE,
MANASERY,
MUNDAMVELI.

5. STATE OF KERALA,
REPRESENTED BY COMMISSIONER AND SECRETARY,
THIRUVANANTHAPURAM.

BY GOVERNMENT PLEADER SHRI M.P. SREEKRISHNAN

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 18/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

H.L. DATTU, C.J. & K.T. SANKARAN, J.

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W.A. No. 2398 OF 2007

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Dated this the 18th October, 2007

J U D G M E N T

H.L. Dattu, C.J.:

This appeal arises out of the order passed by the learned single Judge in O.P.No. 26432 of 1999 dated 20 th February, 2004.

2. The facts in brief are: The petitioner/appellant herein had purchased the right of fishing in the property in question by way of public auction. In pursuance of the revenue recovery proceedings initiated against the 4th respondent, the auction was confirmed in favour of the petitioner/appellant.

3. The 4th respondent, being aggrieved by the revenue recovery proceedings initiated against him for arrears of certain amounts due from him, had approached this Court in O.P.No. 3454 of 1995 and this Court had granted an interim order staying the revenue recovery proceedings initiated against the landlord of the petitioner, viz., the 4th respondent herein.

4. The petitioner's stand before the authorities as well as before this Court was that he was estopped from doing fishing in the auctioned property and therefore, the amount deposited by him requires to be refunded by the respondents-authorities. An order has been passed by the respondents-authorities rejecting the request of the petitioner for refund of the amount deposited by him at the time of auctioning of fishing rights. Curiously enough, the petitioner/appellant has not questioned that order. In the Writ Petition filed, the petitioner had only sought for a direction to the respondents to refund the amount deposited by him.

5. The learned single Judge, being of the opinion that if for any reason,

the petitioner was aggrieved by the inaction on the part of the respondents, he should have definitely questioned Ext.P8 order passed by the respondents. Instead of doing so, in the Writ Petition filed, he merely sought for a direction to the respondents to refund the amount, said to have been deposited by the petitioner at the time of securing the rights for fishing. It is not in dispute that the petitioner had approached the respondents for refund of the amount deposited by him at the time of securing the auction for fishing rights. The respondents-authorities have rejected the request so made by the petitioner. In our opinion, the petitioner ought to have questioned the said order before an appropriate forum. Instead of doing so, the petitioner had rushed to this court with a Writ Petition ,seeking for a direction in the nature of a writ of mandamus to the respondents to refund the amount of Rs.50,500/-. Without questioning the correctness or otherwise of Ext.P8 order passed by the respondents-authorities, the petitioner should not have approached this court for a direction to the respondents to refund the amount deposited by him. In view of the above, the learned single Judge was fully justified in rejecting the Writ Petition. Therefore, the Writ Appeal requires to be rejected and it is rejected.

Ordered accordingly.

H.L. DATTU,
CHIEF JUSTICE.

K.T. SANKARAN,
JUDGE.

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